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FILED
JUN 4 1945
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Supreme Court of the United States

OCTOBER TERM, 1944

No. 1279

ROBERT L. EMERY, ET ALS,

versus

ORLEANS LEVEE BOARD

Opposition to Petition for Writ of Certiorari and Review to the Supreme Court of Louisiana.

SEVERN T. DARDEN,
General Counsel,
HUGH M. WILKINSON,
Of Counsel,
Attorneys for Opponent to Issuance of Writ of Certiorari, the Board of Levee Commissioners of the Orleans Levee District.

HAUSER PRINTING CO., INC., NEW ORLEANS

Supreme Court of the United States

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ROBERT L. EMERY, ET ALS,

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Opposition to Petition for Writ of Certiorari and Review to the Supreme Court of Louisiana.

May It Please Your Honors:

There is no federal question whatever involved in this case.

The realty involved was sold for non-payment of taxes on September 23rd, 1922.

The constitutional delay of one year (Article X, Section 11, Constitution of 1921 of Louisiana), within which a redemption from the tax adjudication could have been enforced, expired without any exercise of that right.

With the expiration of said year, any and all vested rights on the part of the former owner **ended.**

Even a statutory **permission** to redeem later on (involving no constitutional **right** to do so), under Act 41 of 1912, was never exercised.

After one year from the tax sale (1923) the property stood in the State of Louisiana by unconditional title, with the power in the State to do what it pleased with the land.

Such was the legal situation when the regular session of the Legislature of Louisiana met in the month of May, 1924.

That Legislature, by Act 99 of 1924, provided for the construction by the Orleans Levee Board of the Bohemia Spillway, within whose area this land, with much other land, is situated. The Orleans Levee Board, with the approval of the United States Engineers, the Mississippi River Commission, and the State Board of Engineers, proceeded during 1925 to lay out and construct this great public work to protect the City of New Orleans from river floods. The task was accomplished at a public expense of over a million dollars, and the completion of said spillway was recognized and approved by the Louisiana Legislature of 1926, by Act 160 of that year.

The land in controversy has been in the spillway area for 20 years. It was in that spillway area for 13 years, until 1938, before the former owners (who had permitted it to go to the State for taxes in 1922) undertook to do anything about their alleged rights.

The court of last resort of Louisiana, the Supreme Court of Louisiana, interpreting the Bohemia Spillway Act (Act 99 of 1924), has decided that said statute effected a legislative dedication of this then State-owned land for the public purpose of said spillway. We quote the following from the language of the Louisiana Supreme Court in the *per curiam* handed down with the refusal of a rehearing on February 19th, 1945 (21 So. (2d) 418, at page 423):

"Under the construction placed upon the Act by the majority opinion, of the Court of Appeal and our interpretation thereof, the State land in question was withdrawn from redemption because it was dedicated for public uses and purposes and for a governmental function several years prior to the time that the plaintiffs attempted to redeem it. Since the State had title to the land at the time the Legislature passed Act 99 of 1924, it had the authority to so dedicate it and, having done so, the land owner was without any right to subsequently redeem it. The constitutional questions presented in argument and brief under the due process clauses of the Constitutions of this State and of the United States are predicated upon the fact that the plaintiffs were still the owners of the property in 1924 and, therefore, the State, through the Legislature, was powerless to take private property for public purposes without due process of law and the payment of just compensation therefor. As the Court of Appeal and this Court both reached the conclusion that at the time the statutory dedication was made in 1924, the plaintiffs were no longer the owners of the property, the sections and articles of the Federal and State Constitutions relied upon are inapplicable. In short, the State was dedicating the land that it had title to and was not attempting to dedicate private property for a public purpose. This is conclusively shown by the provisions in that statute which authorized the defendant to expropriate private land in the spillway, which was located by the State and Federal engineers. Our decision, as well as the one of the Court of Appeal in this matter, is confined to the particular land in question which was owned by the State and has no reference whatsoever to other lands privately owned in the area designated by the engineers as the spillway."

This pronouncement by the court of last resort in Louisiana that this land, while it was public land of the

State, was legislatively dedicated for a public purpose in 1924, and was thereby withdrawn from commerce and therefore from the operation of any **subsequently-enacted** redemption statute of the State, is controlling.

The plaintiffs below claimed under an alleged redemption from the tax sale of 1922 (constitutionally final in one year, or in 1923) which redemption was purported to have been accomplished under Act 47 of 1938, 14 years after the Bohemia Spillway Act was passed and the State-held property in said spillway area dedicated to public use (as decided by the Louisiana Supreme Court) and 15 years after the constitutionally-fixed year for redemption had ended. Any general statutory right of redemption of tax-sold lands created by Act 47 of 1938 was not at that late time available to plaintiffs because the same legislative authority which brought into being such statutory right of redemption had 14 years previously exercised its power to dedicate this land (to which the State then held complete title) for the purposes of this public work.

The dedication and actual use of all land in the spillway area for this purpose during the construction in 1925 was open and notorious, being widely publicized in and around New Orleans, and for 13 years thereafter the plaintiffs asserted no rights, until they erroneously believed the Legislature of 1938 created some rights for them by a general tax-redemption law (which, however, could not affect land long since in public use).

The process of law by which this property became part of the said Bohemia Spillway was due and adequate in every respect under law of Louisiana, depending on three stages: (1) the tax sale of 1922, which has never been attacked, caused by the delinquency of the former owners in not discharging their tax-debt, (2) their per-

mitting the year during which they had any vested rights (Constitution of Louisiana of 1921, Article X, Section 11) to expire without redemption, thus translating unconditional title to the State of Louisiana, and (3) the legislative dedication of the land to public use in 1924, which dedication is recognized as such by the Supreme Court of Louisiana (21 So. (2d) 418, advance sheets of April 26, 1945).

Nothing in these proceedings is claimed to be lacking under State or Federal law, or State or Federal constitutional requirements.

The claim of plaintiffs is limited to a purported redemption 14 years **afterwards** and by authority of a State law, general in character, passed 14 years after the dedication of the land to public use.

The plea of a federal question herein is not maintainable. The case involves only issues of State public law, affecting the requirements for collection of the State's revenue, delinquencies in payment of State taxes, sale of land by State officers for unpaid taxes, privileges for tax-sale redemption created by the State Constitution and State laws, and dedication of public-owned land by State statute. The case was fully tried under such issues in the District Court, and was exhaustively reviewed by not only the Court of Appeal for the Parish of Orleans (15 So. (2d) 783) but also under writ of certiorari by the Supreme Court of Louisiana (21 So. (2d) 418).

There can be no question but what the State owned this land in 1924 and that the Legislature had the right to dedicate it to public use. The Louisiana Supreme Court has interpreted a statute of the State (Act 99 of 1924) as such a dedication. In our humble opinion, the United States Supreme Court could not change the status of the property under discussion except by repudiating

the finding of the State's court of last resort interpreting a State statute, since all rights claimed by our opponents admittedly arose years after the statutory dedication now recognized by the Louisiana Supreme Court.

The instant petitioners for certiorari to your Honors have enjoyed the uttermost due process of law in the courts of Louisiana, and their petition for writ should be denied as there is no real federal question involved.

Respectfully submitted,

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HUGH M. WILKINSON,
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Attorneys for Opponent to Issuance of Writ of Certiorari, the Board of Levee Commissioners of the Orleans Levee District.

May, 1945.